



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Highway Administration**

**[Docket No. FHWA-2022-0005]**

### **Renewal Package from the State of Florida to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State**

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of proposed MOU and request for comments.

**SUMMARY:** This notice announces that FHWA has received and reviewed a renewal package from the Florida Department of Transportation (FDOT) requesting renewed participation in the Surface Transportation Project Delivery Program (Program). This Program allows for FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA determined the renewal package to be complete and developed a draft renewal MOU with FDOT outlining how the State will implement the Program with FHWA oversight. The public is invited to comment on FDOT's request, including its renewal package and the proposed renewal MOU, which includes the proposed assignments and assumptions of environmental review, consultation and other activities.

**DATES:** Please submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) and follow the online instructions for submitting comments.
- Facsimile (Fax): 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave., S.E., West Building Ground Floor Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., S.E., Washington, DC 20590-0001 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Karen Brunelle by email at: [Karen.Brunelle@dot.gov](mailto:Karen.Brunelle@dot.gov) or by telephone at (850) 553-2218. The FHWA Florida Division Office's normal business hours are 8 a.m. to 4:30 p.m. e.t., Monday-Friday, except for Federal holidays. For the State of Florida: Jennifer Marshall, P.E. by email at: [Jennifer.Marshall@dot.state.fl.us](mailto:Jennifer.Marshall@dot.state.fl.us) or by telephone at (863) 519-2239. State business hours are the same as above although State holidays may not completely coincide with Federal holidays.

## **SUPPLEMENTARY INFORMATION:**

### **Electronic Access**

An electronic copy of this notice may be downloaded from the Federal Register's home page at [www.archives.gov](http://www.archives.gov). An electronic version of the application materials and proposed MOU may be downloaded by accessing the DOT docket, as described above, at [www.regulations.gov/](http://www.regulations.gov/).

### **Background**

Section 327 of Title 23, United States Code (U.S.C.), allows the Secretary of the DOT to assign, and a State to assume, the responsibilities under the NEPA (42 U.S.C. 4321 et seq.) and all or part of the responsibilities for environmental review, consultation, or other actions required under certain Federal environmental laws with respect to one or more Federal-aid highway projects within the State. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The FDOT entered the Program on December 14, 2016, after submitting its application to FHWA, obtaining FHWA's approval, and entering into a MOU in accordance with 23 U.S.C. 327 and FHWA's application regulations for the Program (the original 23 CFR part 773).

On April 15, 2016, prior to submittal of its application to FHWA, FDOT published in the *Florida Administrative Register* and solicited public comment on its draft application to participate in the Program. After considering and addressing public comments, FDOT submitted its application to FHWA on May 31, 2016. The application served as the basis for developing the MOU identifying the responsibilities and obligations FDOT would assume. The FHWA published a notice of the draft MOU in the Federal Register on November 1, 2016, soliciting the views of the public and Federal agencies on FHWA's preliminary decision to approve the application. Following the comment period, FHWA and FDOT considered comments and proceeded to execute the MOU (2016 MOU). Effective December 14, 2016, FDOT assumed FHWA's responsibilities under NEPA, and the responsibilities for reviews under other Federal environmental requirements.

On May 12, 2021, after coordination with FHWA, FDOT submitted a renewal package in accordance with the renewal regulations in 23 CFR 773.115. On October 20, 2021, FDOT sent a letter requesting an extension to the 2016 MOU in order to allow further discussion on additional language in the renewal MOU. In a letter dated

December 8, 2021, FHWA granted an extension of the MOU until April 29, 2022. Under the proposed renewal MOU, FHWA would assign to the State, through FDOT, the responsibility for making decisions on the following types of highway projects:

1. All Class I, or environmental impact statement (EIS) projects, both on the State highway system (SHS) and Local Agency Program (LAP) projects off the SHS that are funded by FHWA or require FHWA approvals. The Class I projects under the proposed renewal MOU include two projects excluded from assignment under the 2016 MOU. Since that time, Records of Decision have been issued, and statutes of limitation for initiation of legal proceedings have passed, for both these projects. Therefore, responsibility and liability for any future environmental review are assigned to FDOT.

2. All Class II, or categorically excluded projects, both on the SHS and LAP projects off the SHS that are funded by FHWA or require FHWA approvals.

3. All Class III, or environmental assessment projects, both on the SHS and LAP projects off the SHS that are funded by FHWA or require FHWA approvals.

4. Projects funded by other Federal agencies, or projects without any Federal funding, of any Class that also include funding by FHWA or require FHWA approvals and meet the definition of a highway project found at 23 CFR 773.103. For these projects, FDOT would not assume the NEPA responsibilities of other Federal agencies. However, FDOT may use or adopt other Federal agencies' NEPA analyses or documents consistent with 40 CFR 1500-1508, current law, and DOT and FHWA regulations, policies, and guidance.

Excluded from assignment are highway projects authorized under 23 U.S.C. 202 and 203; highway projects under 23 U.S.C. 204, unless the project will be designed and constructed by FDOT; projects that cross State boundaries; projects that cross or are adjacent to international boundaries; any projects that may be designed and constructed by FHWA under a 23 U.S.C. 308 agreement between the FHWA Eastern Federal Lands

Highway Division and FDOT; projects under the Recreational Trails Program at 23 U.S.C. 206; and any projects advanced by direct recipients of Federal-aid highway funds other than FDOT except when pursuant to a LAP Agreement between FDOT and the direct recipient.

The assignment also would give FDOT the responsibility to conduct the following environmental review, consultation, and other related activities:

#### Air Quality

- Clean Air Act (CAA), 42 U.S.C. 7401–7671q, with the exception of any project level conformity determinations (42 U.S.C. 7506)

#### Noise

- Noise Control Act of 1972, 42 U.S.C. 4901-4918
- Compliance with the noise regulations in 23 CFR 772
- Airport Noise and Capacity Act of 1990, 49 U.S.C. 47521-47534

#### Wildlife

- Endangered Species Act of 1973, 16 U.S.C. 1531–1544
- Marine Mammal Protection Act, 16 U.S.C. 1361-1423h
- Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Bald and Golden Eagle Protection Act, 16 U.S.C. 668-668d
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801-1891d et seq., with Essential Fish Habitat requirements at 16 U.S.C. 1855(b)(2)

#### Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 – 9675

- Superfund Amendments and Reauthorization Act, 42 U.S.C. 9671 - 9675
- Resource Conservation and Recovery Act, 42 U.S.C. 6901 – 6992k

#### Historic and Cultural Resources

- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101 et seq.
- 23 U.S.C. 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and implementing regulations at 23 CFR part 774
- Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa-470mm
- Title 54, Chapter 31, Preservation of Historical and Archeological Data, 54 U.S.C. 312501-312508
- Native American Grave Protection and Repatriation Act, 25 U.S.C. 3001–30131; 18 U.S.C. 1170

#### Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act, 7 U.S.C. 4201–4209

#### Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251–1387 (Sections 319, 401, and 404)
- Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
- Coastal Zone Management Act, 16 U.S.C. 1451–1466
- Safe Drinking Water Act, 42 U.S.C. 300f – 300j–26
- Rivers and Harbors Act of 1899, 33 U.S.C. 403
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Wetlands Mitigation, 23 U.S.C. 119(g) and 133(b)
- Flood Disaster Protection Act, 42 U.S.C. 4001–4130
- FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777

### Parklands

- Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303
- Land and Water Conservation Fund Act, 54 U.S.C. 200302 - 200310

### FHWA-Specific

- Environmental Impact and Related Procedures, 23 CFR part 771
- Planning and Environment Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Efficient Project Reviews for Environmental Decision Making 23 U.S.C. 139
- Programmatic Mitigation Plans, 23 U.S.C. 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

### Executive Orders (EO) Relating to Highway Projects

- EO 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR 650.113 and 650.115)
- EO 11990, Protection of Wetlands
- EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- EO 13112, Invasive Species.
- EO 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- EO 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis
- EO 14008, Tackling the Climate Crisis at Home and Abroad
- Other EO's not listed, but related to highway projects.

The proposed renewal MOU would allow FDOT to continue to act in the place of FHWA in carrying out the environmental review-related functions described above,

except with respect to government-to-government consultations with federally recognized Indian Tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian Tribes, which is required under some of the listed laws and EO's. The FDOT will continue to handle routine consultations with the Tribes and understands that a Tribe has the right to direct consultation with FHWA upon request. The FDOT also may assist FHWA with formal consultations, with consent of a Tribe, but FHWA remains responsible for the consultation. The FDOT also will not assume FHWA's responsibilities for conformity determinations required under Section 176 of the CAA (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

The MOU content reflects FDOT's desire to continue its participation in the Program. The FHWA and FDOT have agreed to modify some of the provisions in the MOU to, among other things: clarify the categories of projects for which FDOT is assigned responsibility, including two Class I projects previously excluded from assignment under the 2016 MOU; exclude certain highway projects from assignment, including projects under the Recreational Trails Program and certain direct recipient projects; designate a Senior Agency Official at FDOT consistent with 40 CFR 1508.1(dd); remove auditing requirements; revise monitoring requirements; update record retention requirements; provide for enhanced reporting to FHWA on issues including environmental justice analysis and associated mitigation, where applicable; revise provisions related to data and information requests; and revise provisions related to FHWA-initiated withdrawal of assigned projects.

A copy of the proposed renewal MOU and renewal package may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on FDOT's Website at <https://www.fdot.gov/environment/nepaassignment.shtm>. The FHWA Florida



Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final renewal MOU approved by FHWA may include changes based on comments and consultations relating to the proposed renewal MOU and will be made publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing EO 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 773; 40 CFR 1507.3,  
1508.4.

**Stephanie Pollack,**  
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